



The Attorney General of Texas

RQ-852

December 21, 1982

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An Equal Opportunity/
Affirmative Action Employer

Mr. John Wright
John Wright and Associates
P. O. Box 1777
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Open Records Decision No. 327

Re: Whether principal's hand-written notes and letter by employee are available to employee

Dear Mr. Wright:

As attorney for the Grand Prairie Independent School District, you have requested our decision under the Open Records Act, article 6252-17a, V.T.C.S., as to whether certain material concerning a teacher must be made available to the teacher or his representative upon the teacher's request to see all documents which deal with his performance as an employee.

You state that a teacher requested that the documents be released to a representative of the Texas State Teachers Association. The request was precipitated by the fact that the teacher was not rehired for a coaching job, although he was rehired as a teacher. You indicate that subsequent to the request, the principal turned over all of the contents of the personnel file, but did not release material filed elsewhere. The separate material included a letter written by the requestor to another teacher; notes made by the principal concerning the requestor's actions while coaching; notes made by the athletic director about his conversation with a student regarding the requestor; and notes made by the athletic director about a meeting in which the requestor was told he could not continue coaching. You state that these notes and the letter should be excepted from disclosure because they are personal notes kept by an employer. You have cited no exception found in the Open Records Act.

We shall first discuss the notes made by the principal and the athletic director. This office has previously recognized that "personal notes of an individual employee in his sole possession and made solely for his own use" are not public records. (Emphasis added). Open Records Decision No. 77 (1975). In making that exception, this office said:

We believe that our conclusion is compelled by the plain words of the Open Records Act, which applies only to information which is collected,

assembled or maintained by a governmental body. We note that a provision in an analogous federal statute, the Family Education Rights and Privacy Act of 1974, specifically recognizes that employees may make notes for their personal use, and states that educational records available under that act do not include:

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute.... (Citation omitted).

Open Records Decision No. 77, above, dealt with personal notes made by individual faculty members of the Academic Freedom Committee of the University of Texas for their own use as memory aids. The university did not require or control the notes, and the notes remained in the possession of the makers.

By contrast, the facts you have given indicate that the notes of the principal and the athletic director were made in their capacities as supervisors of the employee. The notes were not in the "sole possession" of the makers, but were part of school records, kept in school files. We believe that your basic premise, i.e., that the notes made by the principal and the athletic director are not part of the employee's personnel file, is erroneous. It is well established that anything relating to an employee's employment and its terms, constitutes information relevant to the individual's employment relationship and is a part of his personnel file. Open Records Decision Nos. 55, 31 (1974). It is our opinion that the notes are part of the requestor's personnel file.

Although you have not raised the issue of confidentiality of student records under section 3(a)(14) of the Open Records Act, we believe that the athletic director's notes concerning a student are excepted from disclosure because the notes might identify the student. Open Records Decision Nos. 224 (1979); 206 (1978).

Section 14(e) of the act provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A.

Section 1232g, as amended [hereinafter the Buckley Amendment].

"Education records" is defined to include all records which:

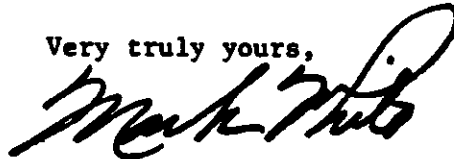
(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. §1232g(a)(4)(A). Comments by identifiable students regarding a teacher or faculty member are excepted from disclosure by the Buckley Amendment, by incorporation into the Open Records Act. Open Records Decision Nos. 224 (1979); 206 (1978). The athletic director's notes of his conversation with the student contain information "directly related" to a student, are maintained by the principal in his file, and therefore qualify as education records.

Therefore, all the notes made by the principal and the athletic director, except those of the meeting with a student, must be released to the teacher.

The teacher's letter, a copy of which is in the principal's possession, cannot be considered notes made by the employer "for his own use" and must therefore be made available to the teacher.

Very truly yours,



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